

1 Martin E. Rosen (SBN CA 108998)
2 mrosen@hinshawlaw.com
3 Larry M. Golub (SBN CA 110545)
4 lgolub@hinshawlaw.com
5 Jenny H. Wang (SBN CA 191643)
6 jwang@hinshawlaw.com
HINSHAW & CULBERTSON LLP
633 West 5th Street, 47th Floor
Los Angeles, CA 90071-2043
Telephone: 213-680-2800
Facsimile: 213-614-7399

7 Attorneys for Defendant
8 UNITED OF OMAHA LIFE INSURANCE COMPANY

9
10 **UNITED STATES DISTRICT COURT**
11
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 JENNIFER BENTLEY, as Trustee of
14 the 2001 Bentley Family Trust,

15 Plaintiff,

16 vs.

17 UNITED OF OMAHA LIFE
18 INSURANCE COMPANY,

19 Defendant.

20 Case No. 15-cv-07870-DMG (AJWx)
(Honorable Dolly M. Gee)

21 **DECLARATION OF LARRY M.
22 GOLUB IN SUPPORT OF
23 OPPOSITION TO PLAINTIFF'S
24 MOTION FOR CLASS
25 CERTIFICATION**

26 Hearing Date: March 30, 2018
27 Hearing Time: 10:00 a.m.
28 Courtroom: 8C

[Filed Concurrently With: (1) Opposition
to Motion; (2) Declaration of Veronica
Dougherty; (3) Declaration of Nancy
Irvine; (4) Index of Evidence; and (5)
[Proposed] Order]

29 **EXHIBITS TO THIS
30 DECLARATION ARE ATTACHED
31 TO THE ACCOMPANYING INDEX
32 OF EVIDENCE**

33 Discovery Cut-Off: May 22, 2018
34 Pre-Trial Conf. Date: August 28, 2018
35 Trial Date: September 25, 2018

36 Complaint Filed: August 27, 2015

DECLARATION OF LARRY M. GOLUB

I, Larry M. Golub, hereby declare as follows:

1. I am an attorney licensed to practice in all the courts in the State of California and a member of Hinshaw & Culbertson LLP, attorneys for Defendant United of Omaha Life Insurance Company (“United”). I am one of the attorneys primarily responsible for the handling of this matter. I have personal knowledge of the facts declared herein and if called upon to testify can and will testify competently thereto.

2. On December 2, 2016, United served its written responses to the first set of Plaintiff's document requests and interrogatories. Attached hereto as **Exhibit 10** is a true and correct copy of United's responses to Plaintiff's first set of document demands. (United's responses to Plaintiff's first set of interrogatories was served at the same time and referred to the concurrently-served document responses.) These discovery requests were not limited to policies that "renewed" after January 1, 2013, despite Plaintiff's argument made in this action that California Insurance Code sections 10113.71 and 10113.72 (the "Statutes") apply to policies issued before January 1, 2013 if the policies "renewed" thereafter.

3. On behalf of United in this action, I produced two policy lists in response to document and interrogatory responses served by Plaintiff. Attached hereto as **Exhibit 11** is a true and correct copy of United's responses to Plaintiff's second set of document demands, served November 22, 2017. (United's responses to Plaintiff's second set of interrogatories was served at the same time and referred to the concurrently-served document responses.) I produced the policy lists to Plaintiff's counsel on November 28, 2017. I then produced an updated set of policy lists to counsel on December 12, 2017 (United 1252-1254), which is the version of the lists that is found as Exhibit F to Plaintiff's motion. It is also attached to the

1 accompanying Declaration of Veronica Dougherty (“Dougherty Declaration”) as
2 Exhibit 1.

3 4. At the request of Plaintiff’s counsel, United has updated the policy lists
4 on multiple occasions, with the most recent update conducted in late January 2018,
5 based on the most current data in its computer systems through the end of December
6 2017. I advised counsel for Plaintiff of this fact in an email dated January 29, 2018.
7 The updated information did not generate any policies in addition to those contained
8 on the policy lists supplied on December 12, 2017.

9 5. Of the 46 policies found on the two lists at United 1252-1254, the
10 “California” list contains 45 policies, which includes policies that were (1) issued or
11 delivered in the State of California prior to January 1, 2013, (2) which lapsed after
12 January 1, 2013, (3) where United’s computer system categorized that event as a
13 lapse for “non-payment of premium,” and (4) the insured died after the date of lapse.
14 The second list, the non-California list, contains the one policy issued or delivered
15 **outside** the State of California (either prior to or after January 1, 2013). The second
16 list was generated after United searched for policies that (1) “renewed” on or after
17 January 1, 2013, (2) where the policyholder was residing in California at or after the
18 time of renewal based on the address of record as recorded in United’s electronic
19 systems, (3) which lapsed after January 1, 2013, (4) where United’s computer
20 system categorized that event as a lapse for “non-payment of premium,” and (5)
21 where the insured died after the date of lapse. For purposes of responding to
22 Plaintiff’s discovery requests, the parties agreed that the concept of “renewal” for
23 non-California policies would mean that the policy stayed in force after the first
24 annual recurrence of the policy’s effective date, otherwise known as its anniversary
25 date, after January 1, 2013. *See* Exhibit 11, at pp. 6:20-7:1.

26 6. Plaintiff’s initial discovery requests to United sought (1) documents
27 “sufficient to show each type of life insurance policy issued by [United], and in
28 effect as of January 1, 2013” and (2) documents “sufficient to show the terms and

1 conditions of each life insurance policy issued by [United] and in effect as of
2 January 1, 2013.” *See Exhibit 10*, at pp. 4:11-5:16. In response to those discovery
3 requests, United produced 17 specimen life insurance policies constituting those
4 United policy forms that had been issued or delivered in California prior to January
5 1, 2013 and that were still in effect as of that date. These specimen forms were
6 bates-numbered as United 292-566. The policies included both term policies and
7 permanent policies, such as whole life or universal life policies. Certain of the term
8 policies contained provisions that referred to renewal and/or stated on the face page
9 of the policy that it was “annually renewable” to a certain age. The term policy
10 issued to Eric Bentley (Form No. 6182L) was one such a policy. *See Exhibit A* to
11 Plaintiff’s motion, Dkt. No. 121-3, at pp. 2, 3, 13-14. However, unlike the Bentley
12 policy form, most of the non-term (*i.e.*, permanent) policies did not refer to renewal
13 and/or state on the face page of the policy that it was “annually renewable” to a
14 certain age. Five of the policy forms and a total of 28 policies identified in the
15 policy lists fall into this category. *See* the fifth column in Exhibit F to Plaintiff’s
16 motion, Dkt. No. 121-3, at pp. 76-77, and Exhibit 1 to the Dougherty Declaration; in
17 particular, form nos. 1084L (with 6 listed policies), 1097L (with 4 listed policies),
18 6442L (with 3 listed policies), 7627L (with 12 listed policies) and 7629L (with 3
19 three policies)). In other words, nearly 61% (or 28) of the 46 policies on the lists do
20 not contain any “renewal” language. True and correct copies of those five specimen
21 forms are attached hereto as **Exhibits 12-16**. Of these 28 policies that do not refer to
22 renewal and/or state on their face page that they are “annually renewable,” seven of
23 them are not listed in the 14 remaining policies after the reductions of policies are
24 calculated in paragraph 4 of the Dougherty Declaration. (Looking at the number of
25 beneficiaries, as listed on the chart attached as Exhibit 1 to the Dougherty
26 Declaration, the 14 policies have 18 beneficiaries (one with four (No. UR2647072)
27 and one with two (No. BU1395175)), and the 7 policies have 8 beneficiaries (No.
28 BU1395175 with two).

1 7. The Declaration of John P. Bjork submitted in support of Plaintiff's
2 motion states that, in order to establish Plaintiff bad faith claims, Plaintiff
3 subpoenaed "life insurers to determine how they interpreted the applicability of the
4 California Insurance Code sections 10113.71 and 10113.72 ('Statutes') to renewals
5 and what actions they took to comply with the Statutes." *See* Dkt. No. 121-2, at p. 3,
6 ¶ 9. Mr. Bjork does not explain that Plaintiff issued subpoenas to ten (10) separate
7 life insurers, and that nine of them objected without providing any documents. The
8 one insurer that produced documents without objections is Northwestern Mutual,
9 whose declaration is attached as Exhibit E to Plaintiff's motion. *See* Dkt. No. 121-3,
10 at pp. 73-74. The Northwestern Mutual Declaration says nothing about the
11 applicability of the Statutes to "renewals" and merely states in paragraph 6 that
12 since "January 1, 2013, for policies issued or delivered in California (whether issued
13 or delivered before or after 2013), Northwestern Mutual has included in the Annual
14 Policy Statement a notice reminding the policy owner that he/she could designate a
15 secondary addressee to receive copies of policy notices and other
16 documents/letters." The Declaration states in paragraph 3 that Northwestern Mutual
17 sent such annual statements to "policy owners whose policies were issued or
18 delivered in California." The above statements confirm that Northwestern Mutual
19 only issued such notice reminders to policies issued or delivered *in California*.

20 8. One other insurer, Transamerica Premier Life Insurance Company
21 ("TPLIC"), after interposing objections, produced two documents in response to
22 Plaintiff's subpoena. True and correct copies of the two documents served in this
23 action by TPLIC on January 4, 2018 are collectively attached hereto as **Exhibit 17**.
24 The first document was an email blast from an insurer trade association, Association
25 of California Life & Health Insurance Companies ("ACLHIC"), to a multitude of
26 insurer representatives. ACLHIC issued the email following a telephone conference
27 it conducted with another insurer trade association, the American Council of Life
28 Insurers, and representatives of the California Department of Insurance ("DOI")

1 during which they discussed the prospective nature of the Statutes. In the second
2 paragraph of that email (at page TPLIC 0003), ACLHIC informed the insurance
3 industry of the results of its call with the DOI:

4 “The call went better than expected, as requirements for the 60-day grace
5 period and alternate designee provisions will be applied prospectively, and
6 will only impact those policies issued, delivered or renewed on or after
7 January 1, 2013.”

8 In a subsequent email from ACLHIC to TPLIC (at page TPLIC 0009), ACLHIC
9 clarified what constitutes a “renewal” as follows:

10 “Requirements for the 60-day grace period and alternate designee
11 provisions will be applied prospectively, and will only impact those policies
12 issued or delivered on or after January 1, 2013.

13 It is intended to apply only to new policies issued on or after 1/1/13,
14 and not to a standard renewal.

15 If a policy/contract is changed substantially at renewal so it might be
16 deemed a “new policy”, in 2013 and beyond, the requirements will likely
17 apply. (e.g., the underlying policy is being changed and it is being reissued as
18 a new policy/contract.”

19 9. TPLIC subsequently served a declaration on Plaintiff’s and United’s
20 counsel on February 22, 2018, and a true and correct copy of this declaration is
21 attached hereto as **Exhibit 18**. In that declaration, TPLIC states at paragraph 11:

22 “Based on [the DOI’s] interpretation of the Statutes (communicated by
23 ACLHIC to its member insurers and TPLIC as noted above), as well as
24 TPLIC’s own analysis and review of the Statutes, TPLIC concluded that the
25 Statutes do not apply to life insurance policies issued or delivered in
26 California prior to the January 1, 2013 effective date of the Statutes. Thus,
27 TPLIC did not apply the requirements of these Statutes to policies issued or
28

1 delivered prior to January 1, 2013, including renewals of such policies after
2 January 1, 2013.”

3 10. In this action, Plaintiff produced 71 pages of documents on December
4 15, 2016. Attached hereto as **Exhibit 19** is a true and correct copy of the December
5 15, 2016 cover letter from Plaintiff’s counsel that transmitted those documents,
6 along with the first eight pages of Plaintiff’s production. These eight pages consist
7 of letters between the California Department of Insurance and Jennifer Bentley’s
8 counsel of record, David Klevatt. These letters were bates-numbered as Bentley 1-8.

9 11. On December 13, 2017, I attended and defended the Rule 30(b)(6)
10 depositions of United’s witness Nancy Irvine. A true and correct copy of pertinent
11 portions of the transcript from the Irvine deposition (including an errata sheet and
12 Ms. Irvine’s signature) are attached hereto as **Exhibit 20**. Attached hereto as
13 **Exhibit 21** is a true and correct copy of a document identified at the Irvine
14 deposition as Exhibit 14 (the payment audit history for the Bentley policy) and
15 authenticated Ms. Irvine at pages 21:2-22:15. Attached hereto as **Exhibit 22** is a true
16 and correct copy of a document identified at the Irvine deposition as Exhibit 16 (the
17 Business Events notes for the Bentley policy) and authenticated by Ms. Irvine at
18 page 44:6-21.

19
20 I declare under penalty of perjury under the laws of the United States that the
21 foregoing statements are true and correct.
22

23 Executed on February 27, 2018, at Los Angeles, California.
24

25 /s/ Larry M. Golub
26 LARRY M. GOLUB
27
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